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ABSTRACT

This document is designed to help New Jersey parents, guardians, and caregivers understand the legal concepts and procedures involved in disputes over the enrollment of homeless students in local public schools. It also informs them of their legal rights. The requirements of the McKinney Act and of the state regulations concerning the education of homeless children are intended to minimize interruptions in schooling when a child becomes homeless. Therefore, any time that a school district does not follow these rules and procedures, the problem should be brought immediately to the attention of the Homeless Children and Youth Program in the Office of Specialized Programs, New Jersey Department of Education. The rules governing the education of homeless children in New Jersey are found in New Jersey Administrative Code, Title 6, Chapter 5. The state regulations focus on: when a child is considered homeless for purposes of enrollment in a public school; what happens if a child becomes homeless; what a "district of residence" is; how the educational placements of homeless children are decided; how disputes are resolved; who pays tuition and transportation costs; and who monitors compliance. (SM)

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EDUCATION RIGHTS OF HOMELESS STUDENTS

Education Law Center
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EDUCATION RIGHTS OF HOMELESS STUDENTS

Education Law Center

There is no question that children who are homeless, like all children, are entitled to be educated. A federal law, known as the McKinney Act, requires states to provide homeless children and youth with the same access to free public education as is available to other students. 42 U.S.C.A. §11431.

However, parents and school administrators will sometimes disagree over whether a child is in fact homeless and, if so, where the child should be educated. As part of its obligation under the McKinney Act to ensure the education of homeless children, the State of New Jersey has developed a series of procedures that are used to determine which school district should educate a homeless student, and which school district should pay for a student's education. The purpose of these procedures is to ensure speedy educational placement, and continuity of education, for children who are homeless.

This pamphlet is designed to help parents, guardians, and caregivers understand the legal concepts and procedures involved in disputes over the enrollment of homeless students in local public schools, and to inform them of their legal rights.[1] In reading this information, please remember that the requirements of the McKinney Act and of the state regulations concerning the

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[1] Under the state law which applies to the education of homeless children, the word "parent" means natural parent, legal guardian, foster parent, surrogate parent, person acting in place of a parent and/or person legally responsible for a pupil's welfare. N.J.A.C. 6:5-1.2. Thus, the word "parent" will be used throughout this publication to refer to the parent, guardian, or other caregiver of a homeless pupil.

education of homeless children are intended to minimize interruptions in schooling when a child becomes homeless. Therefore, any time that a school district does not follow these rules and procedures, the problem should be brought immediately to the attention of the Homeless Children and Youth Program in the Office of Specialized Populations, New Jersey Department of Education. The phone number for that program is (609) 633-9715.

The rules governing the education of homeless children in this state are found in New Jersey Administrative Code, Title 6, Chapter 5. N.J.A.C. 6:5-1 et seq. These are state regulations which all school districts must follow.

When is a child considered "homeless" for the purposes of enrollment in public schools?

The term "homeless" refers to individuals who lack a fixed, regular, and adequate residence. 42 U.S.C.A. § 11302(a)(1); N.J.S.A. 18A:7B-12(c); N.J.A.C. 6:5-1.2. New Jersey law provides that a child or youth between the ages of 5 and 20 is considered "homeless" for the purposes of enrollment if that student lives in: (1) a shelter, including welfare hotel, congregate shelter, transitional housing for families, or transitional housing for the mentally ill; (2) an institution providing a temporary residence prior to an intended institutionalization; or (3) a public or private place not designed for or typically used by people for regular sleeping accommodations. N.J.A.C. 6:5-1.3(a)1-3. The circumstances under which a family becomes homeless, such as by an eviction, have no bearing on the homeless status of the children. Also, a student is "homeless" if he or she is: (1) living with a parent in a domestic violence shelter; (2) a runaway living in a shelter; (3) a mother living in a home for adolescent mothers; (4) sick or abandoned and living in a hospital and would otherwise be released if he or she had a permanent residence; (5) abandoned, and thus has no permanent residence; (6) the child of a homeless family which is out of necessity living with

relatives or friends; or (7) the child of a migrant family which lacks adequate housing. N.J.A.C. 6:5-1.3(b)1-7.

If a student meets any one of the descriptions listed above, he or she should be considered "homeless." If there is a dispute over whether or not a student is homeless, the school districts involved must immediately notify the county superintendent of schools[2], and ***the county superintendent must decide whether or not the student qualifies as homeless within 48 hours of notice of the dispute***. N.J.A.C. 6:5-1.3(c). The county superintendent's determination regarding a family's status as "homeless" stands unless and until it is reversed on appeal to the Commissioner of Education. See discussion on dispute resolution below.

What happens if a child becomes homeless?

The Homeless Liaison

If a child becomes homeless, the child's parent, or a social worker helping the family, should immediately contact the school district where the child is temporarily residing and ask for the name and phone number of the district's homeless liaison (pronounced "lee-ai-zon"). Every district is required to have a homeless liaison. N.J.A.C. 6:5-1.5(a). This person is responsible for ensuring that a homeless child residing in the district is enrolled and attending school. N.J.A.C. 6:5-1.5(a)(2). In filling this role, the liaison needs to make sure that a "district of residence"[3] is determined and that a timely "educational placement" is made in accordance with the child's best interests.

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2 The county superintendent of schools is responsible for the initial resolution of many of the disputes involving homeless children. The county superintendent is a State Department of Education employee charged with monitoring and assuring compliance with the school laws for the districts within the county.

3 The significance of the "district of residence" and the rules and procedures for determining a homeless child's "district of residence" and "educational placement" will be discussed below.

The liaison of the school district in which the child is presently residing should be notified as soon as possible that the child is homeless, and provided information including the child's name, age, grade, school last attended, address prior to becoming homeless and current, temporary address. The liaison of the child's temporary residence is responsible for notifying the district liaison of the "district of residence" ***within 24 hours*** of the need for educational services for the student. N.J.A.C. 6:5-1.5(b).

The liaison of the "district of residence" is responsible for immediately coordinating procedures for the placement of the homeless child in school, based on the child's best interest and on the educational placement rules described below. N.J.A.C. 6:5-1.5(c).

All district liaisons are responsible for communicating and cooperating with other school districts involved and for developing systems to make sure that homeless students are enrolled in and attending school. N.J.A.C. 6:5-1.5(a)1-2.

What is the "District of Residence"?

A homeless child's "district of residence" is the district where the student's parent last resided before becoming homeless, even if the child was not yet enrolled in school at the time the homelessness occurred. N.J.A.C. 6:5-1.2. The liaisons and their districts will determine which is the district of residence based upon information provided by the Department of Human Services, shelter providers, school districts, involved agencies, case managers, or parents. N.J.A.C. 6:5-1.4(b). The liaison of the district where a homeless child is temporarily living is required to contact the liaison of the district of residence ***within 24 hours*** of learning that the child is homeless. N.J.A.C. 6:5-1.5(b).

The school district identified as the district of residence for a homeless student remains the district of residence for as long as the parent of the student

remain homeless. N.J.A.C. 6:5-1.4(c). The district of residence is responsible for:

(1) educating the homeless student;

(2) determining the best educational placement for the student in consultation with the parent;

(3) paying the costs of tuition and transportation when the student attends school in another district; and

(4) providing transportation when the student attends school in the district of residence while temporarily living in another district.

N.J.A.C. 6:5-1.4(a). Once the district of residence is identified, the liaison of that district is required to act immediately to see that a homeless child is enrolled in the school where his or her best interest will be met. N.J.A.C. 6:5-1.5(c).

If the liaisons and the districts cannot agree which district is the "district of residence," then they must immediately contact the county superintendent(s) for the districts involved. N.J.A.C. 6:5-1.4(d). The county superintendent(s) must resolve the dispute, and identify a district of residence for the student. If the county superintendent(s) cannot resolve the dispute about district of residence, the districts may appeal to the Assistant Commissioner for the Division of Finance within the Department of Education for a determination. N.J.A.C. 6:5-1.4(d).

If a district of residence cannot be determined for a particular child, or if the student lived outside New Jersey just before becoming homeless, then the State is required to take responsibility for paying for the student's costs of education for as long as the parent remains homeless. N.J.A.C. 6:5-1.4(e).

Whenever a district of residence cannot be determined, the district in which the child last attended school or the district where the child is temporarily residing must enroll the child immediately. N.J.A.C. 6:5-1.6(b).

How is the educational placement of a homeless student decided?

A parent is entitled to a decision on his or her child's educational placement ***within three (3) school days*** of the date that the district of residence learns that the child is homeless. N.J.A.C. 6:5-1.6(e)(1). This decision is made by the superintendent of the district of residence, or his/her designee. However, the district of residence is required to consult with the parent before the superintendent makes a decision. N.J.A.C. 6:5-1.6(e).

In addition, the district of residence must follow certain rules in deciding a homeless child's educational placement. The choices for placement are: (1) to continue the student's education in the school district where he or she last attended school; (2) to enroll the student in the district of residence; or (3) to enroll the student in the district where he or she is temporarily living. N.J.A.C. 6:5-1.6(a).

The choice of educational placement must be based on the student's "best interest." N.J.A.C. 6:5-1.6(c). When deciding which placement is in the best interest of the student, the district of residence should consider:

(1) Where the parent wants the student to attend school;

(2) Continuity of the student's education, including consideration of keeping the student in the school he or she has been attending, how long the student has attended a particular school, how much time is left in the current school year, whether the student's credits will transfer or be sufficient for graduation, and where the family plans to seek permanent housing;

(3) Whether the student is eligible for special instructional programs such as bilingual, compensatory, gifted, vocational or special education; and

(4) Distance, travel time, and safety in transporting the student from his or her temporary residence to the school.

N.J.A.C. 6:5-1.6(c). Once a placement decision is made by the district of residence, the child should be placed immediately. N.J.A.C. 6:5-1.6(e)(1). However, if there is a dispute regarding the placement, then the child is not enrolled until the county superintendent makes an educational placement decision under the appeals procedures (see next section). N.J.A.C. 6:5-1.6(e)(3). The district of residence is required to provide written documentation that it consulted with the student's parent when making its decision, and that it informed the parent of the right to appeal the educational placement decision. N.J.A.C. 6:5-1.6(e)(2).

If a homeless student has an educational disability and the placement options available to implement his or her Individualized Education Plan (IEP) cannot be immediately reviewed, the student must be placed in a program consistent with the current IEP for no more than 30 calendar days. Within this 30 days, the district of residence must make sure that the student's IEP has been reviewed and revised in accordance with N.J.A.C. 6A:14 (the state special education regulations), and that the student has been placed in an appropriate setting. N.J.A.C. 6:5-1.6(d).

If a student is enrolled in a district other than the "district of residence," the district where the student last attended school must forward all school and health records to the new district. N.J.A.C. 6:5-1.6(f). A homeless student may not be excluded from school for lack of academic records. N.J.S.A. 18A:36-19A.

How are disputes resolved?

While most disputes regarding the education of homeless children are resolved at the county level through the county superintendent, parents are not always satisfied with the county superintendent's determination, and may want to

appeal the decision further. The State has developed the following procedures for appealing determinations of homelessness and decisions regarding the educational placement of the student.

Determination of homelessness: When a dispute arises as to whether a child is homeless, the liaisons of the districts involved must notify the county superintendent, who in turn, must either resolve the dispute, or issue a decision on the child's status ***within 48 hours***. N.J.A.C. 6:5-1.3(c). The parties involved may appeal the county superintendent's determination to the Commissioner of Education by filing an appeal with the Bureau of Controversies and Disputes pursuant to N.J.A.C. 6:24-1 *et seq*. The county superintendent's determination of homelessness will stand during the appeal process unless a stay is granted by the Commissioner pursuant to N.J.A.C. 6:24-1.5. For information on filing a petition of appeal and requesting a stay of the county superintendent's determination, contact the Bureau of Controversies and Disputes at (609) 292-5705.

Determination of educational placement: A parent who disagrees with the educational placement decision made by the district of residence has the right to appeal that decision to the county superintendent. N.J.A.C. 6:5-1.7(a).[4] In addition, an involved school district official, involved agency, case manager or shelter provider has the same right to appeal a district of residence's educational placement decision for a homeless child. N.J.A.C. 6:5-1.7(a). The district of residence's superintendent or designee is required to notify the county superintendent immediately of any objection to the educational placement made

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[4] If a homeless child is educationally disabled, then any disagreement should be resolved using the procedures for mediation or due process hearings found in N.J.A.C. 6A:14. N.J.A.C. 6:5-1.7(d). Those requests are made to the Director, Office of Special Education Programs, New Jersey Department of Education, PO Box 500, Trenton, NJ 08625-0500, (609) 984-1286.

by the parent or other involved party. The county superintendent must determine an educational placement in the "best interest" of a homeless student ***within 48 hours*** of that notification.[5] N.J.A.C. 6:5-1.7(a). The county superintendent's determination of placement will stand unless and until the parties agree otherwise or the determination is overturned by the Commissioner of Education.

If a parent disagrees with a decision of the county superintendent, then he or she may request mediation to see whether an agreement can be reached on the appropriate educational placement for the homeless student. N.J.A.C. 6:5-1.7(b). A request for mediation should identify the issue(s) in dispute and what result the parent seeks. Requests for mediation can be made either in writing or over the phone to the following office:

Homeless Children and Youth Program
Office of Specialized Populations
P.O. Box 500
New Jersey Department of Education
Trenton, NJ 08625-0500
(609) 633-9715

A mediation conference must be held within 5 days of the request. N.J.A.C. 6:5-1.7(b)(2). A mediation conference involves all parties, including the parent, the district of residence, someone from the county superintendent's office, and any other school district involved. The conference must be informal and held at a time and place reasonably convenient for everyone involved. N.J.A.C. 6:5-1.7(b)(4). The mediator must not be judgmental. The mediator is there to help the parties figure out why they disagree and to identify options that could resolve the dispute.

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5 ELC recommends that a parent who objects to an educational placement decision notify the county superintendent directly of that objection and his or her desire to appeal that decision. Call the New Jersey Department of Education's county superintendent of schools for the county where the district of residence is located and, if possible, confirm the objection in writing.

If the mediation conference results in an agreement, the conclusion will be written down, signed by each party, and forwarded to the county superintendent for appropriate action. If the mediation conference does not result in an agreement, then the parent should contact the Homeless Children and Youth Program again. That office will assist the parent in filing an appeal to the State Commissioner of Education under N.J.S.A. 18A:6-9 and N.J.A.C. 6:24. N.J.A.C. 6:5-1.7(b)(5).

WHILE A REQUEST FOR MEDIATION OR AN APPEAL TO THE STATE COMMISSIONER OF EDUCATION IS PENDING, A HOMELESS CHILD IS ENTITLED TO BE IMMEDIATELY PLACED IN THE SCHOOL CHOSEN BY THE COUNTY SUPERINTENDENT UNTIL THE DISPUTE IS RESOLVED. N.J.A.C. 6:5-1.7(c).

Who pays tuition and transportation costs?

The district of residence is responsible for all tuition costs, no matter where the homeless child is living and going to school, except in those cases where the State assumes fiscal responsibility for the tuition of a homeless child. N.J.A.C. 6:5- 1.8.

If the homeless child attends school in the district of residence while temporarily living elsewhere, the district of residence must provide for transportation to and from school. N.J.A.C. 6:5-1.9(b).

If the homeless child is enrolled in school outside the district of residence, the district of residence is still responsible for paying any transportation costs incurred, but the actual transportation must be provided by the district where the child is enrolled. N.J.A.C. 6:5-1.9(a). In cases where the State has assumed responsibility for the payment of tuition, the district where the homeless child is enrolled must provide transportation. N.J.A.C. 6:5-1.9(c).

Finally, in providing transportation, districts are required to explore alternatives and to choose the most economical and safest mode of transportation under N.J.A.C. 6:21, the state's transportation regulations. N.J.A.C. 6:5-1.9(d).

Who monitors compliance?

The New Jersey Department of Education is responsible for monitoring school districts to make sure that they follow the state rules on the education of homeless children, including making placement decisions according to the rules and within the timelines established by regulation, and providing appropriate educational services and transportation to homeless students. N.J.A.C. 6:5-1.10.

Dated: November 10, 1999